IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06/09/2002

CORAM

THE HON'BLE MR. JUSTICE A.K.RAJAN

S.A.NO.1062 OF 1992

1.G.A.Stanley Jones

2.G.A.Andrews ...Appellants

-Vs-

1.Poornima
2.Subash Chandira G. ...Respondents

Second appeal filed against the Judgment and decree dated 10.11.1988 in A.S.NO.6 OF 1987 on the file of the learned Subordinate Judge, Erode (O.S.No.2931 of 1981 dated 4.2.1985 on the file of District Munsif, Erode)

!For Appellants: Mr.S.Krishnaswamy

^For Respondents: Mr.V,Subramanian
for M/s P.G.Xavier

:J U D G M E N T

This second appeal is filed against the concurrent findings of the courts below.

2. The respondents herein filed a suit in O.S.NO.2931 OF 1981 for injunction and also for mandatory injunction. The case of the plaintiffs is that they purchased vacant site of 1200 sq.ft. in T.S. NO.608, Erode Town from the defendants by a sale deed dated 19.1.1981 . They also put up a compound wall, but subsequently the defendants encroached the properties already sold to them and put up a small construction. The case of the defendants is that though the sale deed was executed and it was stated therein that the sale consideration of Rs.6,000/- has been paid, in fact, only Rs.1,000/- had been paid and balance of Rs.5,000/- was not paid and therefore the sale deed already executed is not binding and hence the plaintiffs are not entitled for injunction and for mandatory injunction. The further case of the defendants is that the property is continued to be the property of the defendants.

3.The trial court after considering the evidence on record, decreed the suit as prayed for. Against that, defendants filed appeal in A.S.NO.6 OF 1987 on the file of Principal Subordinate Judge, Erode and the

appellate court also confirmed the same. Against the same, the present second appeal has been filed.

4.The substantial questions of law which arise for consideration are as follows:

1.Whether the plaintiffs acquired any right under Ex.A-2 (Sale deed even though the plaintiffs did not pay the entire sale consideration?
2.Whether the courts below are justified in granting decree for mandatory injunction when the plaintiffs did not obtain any absloute right under Ex.A-1?

5.The learned counsel for the appellants submitted that the appellants herein have agreed to sell the property for consideration of Rs.6,000/-, but the respondents did not pay the amount as agreed but, due to some reason or other, the sale deed was executed as the entire consideration had been paid. Inasmuch as the consideration has not been paid in full, any document executed by the appellants herein does not convey the title of the property to the respondents herein. Both the courts below erred in holding that the respondents herein got title by the sale deed dated 19.1.1981. This contention of the learned counsel for the appellants is not acceptable. Once the sale deed has been executed and registered and in the sale deed there is a recital that the entire consideration had already bee n paid, the vendor cannot deny the payment and say that the sale consideration has not been paid and therefore say that the sale deed is invalid and that no title has passed.

6. A connected matter between the same parties in the second appeal in S.A..NO.123 of 1989 has already been disposed of by this court by order dated 23.11.2000. Even in that case, similar issue was raised and that has been rejected by this court. Further, once the said sale deed has been executed, it conveys title to the purchaser. If the vendor has not been paid the sale price, he can only file a suit for recovery of money. The respondents herein got title over the property by virtue of the sale deed dated 19.1.1981. Both the courts below are right in holding that the title passes to the purchaser and therefore both the courts below have granted the relied of injunction as well as mandatory injunction as prayed for. There is no illegality in the judgments of the courts below.

Hence, they are confirmed. The second appeal is dismissed. The parties shall bear their own costs.

Index:yes
Website:yes
VJY
To
1.The Subordinate Judge, Erode.

2.The District Munsif, Erode.

A.K.RAJAN,J
S.A.NO.1062 OF 1992